MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5878 OF 2006

Shree Bal Developers & ors. Petitioners
versus
Vilas Shankar Shelar & ors. Respondents

Deepa Ahuja i/by Vineet B. Naik for petitioners.
Mr.V.S.Shelar, the respondent no.1 present in person.
Mr.V.G.Mujamdar for respondent no.5.

CORAM : A.S.OKA, J.
DATE : 24th April 2007

JUDGMENT :-

1. Heard the advocate appearing for the petitioners and the first respondent in person for himself and as the constituted attorney of second to fourth respondents. First to fourth respondents herein are the original plaintiffs and the petitioners are the original defendants. The challenge in this petition under Article 227 of the Constitution of India is to the orders dated 5th February 2005 and 26th June 2006 passed below applications at Exhibits 83 and 104 respectively by the Trial Court. The order dated 5th February 2005 was passed on application at Exhibit-83 made by the first to fourth respondents praying for a direction that the suit shall proceed without the written statement. The

application at Exhibit-104 was filed by the petitioners for setting aside the order passed on the application at Exhibit-83 directing that the suit will proceed without written statement and for seeking a permission to file the written statement. The said application at Exhibit-104 has been rejected by order dated 26th June 2006 which is the order impugned in this petition. On 7th March 2007 submissions of learned advocate for the petitioners and the first respondent appearing in person were heard. On the basis of the order passed on 9th March 2007, the petitioners have deposited a sum of Rs.15,000/- by way of costs in this Court.

2. The first respondent for himself and as the constituted attorney of the second to fourth respondents has filed a pursis dated 23rd April 2007 in which the consent of the said respondents has been recorded to the petitioners' filing their written statement. In view of the pursis filed by the first to fourth respondents, the petition must succeed. The orders impugned will have to be set aside and the written statement tendered by the petitioners will have to be taken on record. First to fourth respondents will have to be permitted to withdraw the sum of

Rs.15,000/- deposited in this Court by petitioners. Hence, writ petition is disposed of by passing following order.

3. ORDER :-

(a) The impugned orders dated 5th February 2005 passed below Exhibit-83 and 26th June 2006 passed below Exhibit-104 are quashed and set aside;

(b) The application made by the petitioners at Exhibit-104 is hereby allowed. The written statement tendered by the petitioners along with the application at Exhibit-104 shall be taken on record by the Trial Court;

(c) The first respondent for himself and in his capacity the constituted attorney of second to fourth respondents will be entitled to withdraw the sum of Rs.15,000/- deposited by the petitioners in this Court;

(d) Petition is allowed in above terms;

(e) All contentions of the parties in the pending suit are expressly kept open;

(f) The Trial Court to decide the suit as expeditiously as possible and preferably on or before 31st December 2007.

(A.S.OKA, J.)